

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

- against -

OMAR GONZALEZ et al.,

Defendants.

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ROBERT P. PATTERSON, JR., U.S.D.J.,

At the argument held on July 7, 2011 the Court denied the motion for a bill of particulars of Defendant Jose Rodriguez (“Rodriguez”) and of those Defendants whose counsel joined in the Rodriguez motion, and also denied a motion for a bill of particulars by Omar Gonzalez (“Gonzalez”), because those motions would have required the Government to disclose the precise manner in which it intends to prove the Defendants’ participation in the charged crime, contrary to the Second Circuit’s holding in United States v. Torres, 901 F.2d. 205 (2d Cir. 1990).

The Court recognizes that the Government has already disclosed sales and lab reports and video and audio recordings of sales pertaining to each Defendant. Nevertheless, because the Indictment charges thirteen Defendants with a broad conspiracy with two objects to distribute or possess with intent to distribute a) 280 grams and more of crack cocaine carrying a mandatory minimum sentence of ten years imprisonment and b) 100 grams and more of heroin carrying a mandatory minimum sentence of five years imprisonment, because the total sales of controlled substances discussed to date against each moving Defendant total less than 10 grams, and because individual Defendants’ participation in such broad conspiracies are generally diverse, the Government is ordered to disclose to each Defendant, by July 15, 2011, the nature of the evidence by which the Government intends to prove that each moving Defendant understood that

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ORDER

the object of the conspiracy he is alleged to have participated in, was to distribute or possess with intent to distribute a) 280 grams and more of crack cocaine and b) 100 grams and more of heroin. That is, the Government must disclose to each moving Defendant if it intends to prove that the Defendant understood that the conspiracy involved 280 grams and more of crack cocaine and 100 grams and more of heroin is based on proof that the Defendant's role in the offense was as a manager or supervisor, based on one or more statements of a co-conspirator in furtherance of the conspiracy, based on any admissions of the Defendant, based on surveillance by Government agents, based on testimony by undercover agents, based on testimony of a confidential informant; based on testimony by any co-conspirators; or based on any other evidence.

This order is not intended to require disclosure of the identity of any witnesses or to require disclosure of times or dates or places.

SO ORDERED.

Dated: New York, New York
July 8, 2011



Robert P. Patterson, Jr.
U.S.D.J.

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